

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5679
DATE COMPLAINT FILED: August 19, 2005
DATE OF NOTIFICATION: August 26, 2005
DATE OF LAST RESPONSE: September 27, 2005
DATE ACTIVATED: February 14, 2006

EXPIRATION OF STATUTE OF LIMITATIONS: August 2010

COMPLAINANT: Republican State Committee of Pennsylvania
RESPONDENTS: Scranton Times-Tribune
Bob Casey for Pennsylvania Committee
and Vanessa DeSalvo Getz, as treasurer

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 441b
2 U.S.C. § 441d
11 C.F.R. § 110.11
11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

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I. INTRODUCTION

Complainant alleges that the Scranton Times-Tribune ("Times-Tribune") and Bob Casey for Pennsylvania Committee ("Casey Committee")¹ violated the Federal Election Campaign Act of 1971 ("the Act" and "FECA") by: (1) using corporate general treasury funds to pay for the costs of creating, producing and distributing an advertisement that allegedly advocated Bob Casey's federal candidacy, in violation of 2 U.S.C. § 441(b) and 11 C.F.R. § 114.2, (2) failing to include the proper disclaimers in said advertisements, in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11, and (3) making illegal corporate contributions to the Casey Committee by coordinating the content, timing and placement of the advertisements with the Casey Committee or its agents, in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2. The Times-Tribune and the Casey Committee (collectively "Respondents") acknowledge that the advertising campaign referenced Mr. Casey, but deny that it advocated his election. Respondents also deny that there was any coordination. As discussed below, the available information supports finding no reason to believe that Respondents violated the Act.

II. FACTUAL BACKGROUND

In 2004, the Scranton-Times LLP decided to merge two of its local Scranton Pennsylvania area newspapers, The Scranton Times and The Tribune, into a single paper that would be called The Scranton Times-Tribune. *See* Times-Tribune Response at 4. To prepare for the proposed merger, the Scranton Times LLP engaged a consumer research organization and advertising agency to help design, test and launch the merged newspaper's new design and masthead logo, and to develop a prototype of the new paper for use in focus groups and in a

¹ Bob Casey, Jr. is a candidate for United States Senate in the November 2006. His principal campaign committee is the Bob Casey for Pennsylvania Committee, Vanessa DeSalvo, treasurer.

1 subsequent advertising campaign. *See* Affidavit of Lawrence K. Beaupre ("Beaupre Aff.") at ¶
2 9.

3 The advertising campaign for the new Scranton Times-Tribune that ran in August 2005,
4 consisted of billboards and banners posted on buses that included the masthead logos of both
5 pre-merger papers, along with the slogan "Better Together" framing a picture of the prototype of
6 the new paper, which included faux newspaper articles (including an article entitled "Casey to
7 Run for Senate"). *See* Attachment A. Times-Tribune Managing Editor, Lawrence K. Beaupre,
8 states that he, along with the research organization and advertising agency, was involved in
9 helping design the prototype of the new paper used in both focus groups and in the advertising
10 campaign. In designing the prototype, Beaupre looked at actual news articles that had already
11 run in both of the newspapers, which discussed current issues that received a high degree of
12 media attention. Beaupre Aff. at ¶ 9. Subjects selected for the front page of the prototype
13 included articles about prominent recent stories, such as the Terry Schiavo lawsuit and Bob
14 Casey's announcement of his intent to run for Senate.

15 Mr. Beaupre attests that the selection of the fictitious headline was not made for the
16 purpose of promoting Casey, but was based on his editorial judgment and recommendations
17 made by the consumer research organization, advertising agency and consumer focus groups,
18 none of which were affiliated with the Casey Committee. Beaupre Aff. at ¶¶ 13-15. In
19 preparing the prototype, Mr. Beaupre changed the original headlines for the Casey article in the
20 two pre-merger papers (*e.g.*, "Casey at Bat" and "Hafer Out, Casey In") in favor of "Casey to run
21 for Senate" expressly because he felt the new headline was more objective, and was less colorful
22 than the headlines that had actually been used when the news story was first published, *Id.*
23

1 **III. ANALYSIS**

2 Complainant alleges that the Times-Tribune advertisement constitutes express advocacy
3 on behalf of Mr. Casey's candidacy and violates 2 U.S.C. § 441b and 11 C.F.R. § 114.2.
4 Complainant further contends that the Times-Tribune advertisement failed to include the proper
5 disclaimers, in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. Finally, the Complainant
6 alleges that the past support that Times-Tribune publisher, William R. Lynette, has given to the
7 state and local campaigns of Bob Casey suggests that the Times-Tribune coordinated the content,
8 timing and placement of the advertisement with the Casey Committee. *See* 2 U.S.C.
9 § 441b and 11 C.F.R. § 114.2. For the reasons set forth below, this Office recommends that the
10 Commission find no reason to believe that the Respondents violated the Act.

11 **A. Corporate Contributions**

12 Complainant contends that the advertisement expressly advocates the candidacy of Bob
13 Casey and that any disbursements are prohibited expenditures under Section 441b of the Act.²
14 Complaint at 3. The Times Tribune contends that there was no express advocacy in the August
15 2005 advertisement with the fictitious Casey headline, which was part of a campaign to bring
16 awareness to the public that The Scranton Times and The Tribune were merging to become a
17 single newspaper.³ Times-Tribune Response at 5.

18 The Act prohibits corporations from making contributions or expenditures from their
19 general treasury funds in connection with an election to federal office. 2 U.S.C. § 441b.

² "Expenditures" are defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 11 C.F.R. § 100.111. They include "any direct or indirect payment, distribution, loan, advance, deposit, or gift or money, or any services, or anything of value." 2 U.S.C. § 441b(b)(2). The Commission's regulations define "anything of value" to include "in-kind contributions" such as the "provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services." 11 C.F.R. § 100.52(d)(1).

³ Respondents also argue that the Times-Tribune advertisement is subject to the so-called press exemption; however, this Office believes that we do not need to reach the issue here because there are other grounds to support our recommendations.

Commission regulations define "express advocacy" as "any communication that uses phrases ... or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)," or when taken as a whole and with limited reference to external events could only be interpreted by a reasonable person as containing advocacy of the election or defeat of clearly identified candidates. 11 C.F.R. § 100.22(a-b). Moreover, the communication must be "unmistakable, unambiguous and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat" the clearly identified candidate(s)." 11 C.F.R. § 100.22(b).

The fictitious headline, "Casey to run for Senate," makes a factual statement regarding Casey's candidacy and does not appear to expressly advocate the election of Casey to the United States Senate. The faux headline was based on an actual news story that had run in both newspapers earlier in the year. Complainant suggests that the slogan "Better Together" contained in the advertisement implies that Bob Casey and "the office of United States Senator are better together." Complaint at 2. The phrase "Better Together" and the names of the old and merged newspapers, are clearly in the foreground of the advertisement. Meanwhile, the prototype of the merged newspaper with the faux headline "Casey to run for Senate" is in the background.

The phrase "Better Together" seems to refer to The Scranton Times and The Tribune as being better together -- as the Times-Tribune suggests. Times-Tribune Response at 8. At the very least, the meaning of the phrase "Better Together" is not "unmistakable, unambiguous or suggestive of only one meaning." See 11 C.F.R. § 100.22(b). Accordingly, the advertising campaign does not expressly advocate the election of Bob Casey to the United States Senate.

1 Accordingly, we recommend that the Commission find no reason to believe that the Times-
2 Tribune violated 2 U.S.C. § 441b.⁴ *Id.*

3 **B. Disclaimers**

4 The Act requires that political campaign advertisements that expressly advocate the
5 election of a federal candidate use language from Section 441d of the Act, which identifies who
6 paid for the advertisements and states whether the federal candidate approved the
7 advertisements. *See* 2 U.S.C. § 441d, 11 C.F.R. § 110.11. Complainant asserts that the Times-
8 Tribune did not include the appropriate disclaimers in the advertisements that it contends
9 advocates the election of Casey. Complaint at 3. Since the advertisement did not expressly
10 advocate the election of Bob Casey, there was no need for a disclaimer, and we recommend that
11 the Commission find no reason to believe that the Times-Tribune violated 2 U.S.C. § 441d.

12 **C. Coordination**

13 Based entirely on the fact that the publisher of the Times-Tribune and his family donated
14 money to the past state campaigns of Bob Casey and his brother Pat, as well as to the
15 Pennsylvania Democratic Party and Democratic opponents of Republican Senator Rick
16 Santorum, Complainant alleges that the Times-Tribune or its publisher coordinated the content,
17 timing, or placement of its advertisements with the Bob Casey or the Casey Committee.
18 Complaint at 3-4, Exhibit D. Respondents deny that they had any communications regarding the

⁴The advertisement also fails to qualify as an "electioneering communication," which is defined as any broadcast, cable or satellite communication that refers to a clearly identified candidate for Federal office, that is publicly distributed for a fee within 60 days before a general, special or runoff election for the office sought by the candidate, or within 30 days before a primary or preference election, and is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3), 11 C.F.R. § 100.29. The advertisement was not published via broadcast, cable or satellite communication, but was printed on buses and billboards. It was not distributed for a fee, rather the newspaper used its own resources and the advertisement campaign ran over a year before the protected 30 and 60-day windows set forth in the Act.

1 advertisements described in the Complaint. Casey Committee Response at 2-4, Times-Tribune
2 Response at 8.

3 A communication is "coordinated" with a candidate, an authorized committee, or agent
4 thereof, if it meets a three-part test: (1) payment by a third party; (2) satisfaction of one of four
5 "content" standards⁵; and (3) satisfaction of one of five "conduct" standards.⁶ See 11 C.F.R.
6 § 109.21(a). Complainant's allegations are speculative and do not meet the content or conduct
7 standards required for a finding of coordination between the Times-Tribune and the Casey
8 Committee.

9 The advertising campaign does not meet the "content" requirement of coordination
10 because it (1) does not include "electioneering communications" as defined by the Act; (2) does
11 not distribute or republish Casey Committee's campaign materials; (3) does not unmistakably or
12 unambiguously advocate the election of Casey or defeat of his adversary; and (4) was not
13 disseminated 120 days or less before the election. See 11 C.F.R. § 109.21(c)(1)-(4). The
14 advertisement simply restates a well-known fact: that Casey intended to run for the United
15 States Senate.

16 The facts as alleged also fail to satisfy the "conduct" standard for coordination. The
17 Times-Tribune attests, through Managing Editor Beaupre's affidavit, that the advertising
18 campaign was solely the result of work done by Beaupre in conjunction with consumer research

⁵ The "content" standards include: (1) an "electioneering communication"; (2) a "public communication" that disseminates campaign materials prepared by a candidate; (3) a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; and (4) certain "public communications," distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party). 11 C.F.R. § 109.21(c)(1)-(4).

⁶ The "conduct" standards include: (1) communications made at the "request or suggestion" of the relevant candidate or committee or at the suggestion of the person paying for the communication and the relevant candidate or committee assents to the suggestion; (2) communications made with the "material involvement" of the relevant candidate or committee; (3) communications made after "substantial discussion" with the relevant candidate or committee; (4) specific actions of a "common vendor"; and (5) specific actions of a "former employee." 11 C.F.R. § 109.21(d)(1)-(5).

1 consultants, an advertising agency and consumer focus groups, which had no affiliation with the
2 Casey Committee. Beaupre Aff. at ¶ 5. Mr. Beaupre further asserts that his motivation in
3 selecting articles the prototype was based on what was appropriate for the focus group process,
4 and not on any suggestions or input from Mr. Lynett. *Id.* at ¶¶ 9, 17. Finally, Beaupre states that
5 the Times-Tribune had no communication with the Casey Committee or its agents during the
6 creative process. *Id.* at ¶ 17. Similarly, the Casey Committee states that it did not request or
7 suggest the advertisement, and had no "material involvement" or "substantial discussion" about
8 the advertising campaign.⁷ Casey Committee Response at 3.

9 Unwarranted legal conclusions or mere speculation will not be accepted as true, and the
10 Commission may find no reason to believe if a complaint sets forth insufficient specific facts to
11 support a violation of the Act. *See* MUR 4960 (Hillary Rodham Clinton); *see also* 11 C.F.R.
12 § 111.4(d)(2). Complainant's allegations that Respondents violated the Act are based solely on
13 the fact that the Lynett family made political contributions to Bob Casey and other Democratic
14 candidates in the past. Such speculation is insufficient to find reason to believe the Act has been
15 violated.

16 Therefore, we recommend that the Commission find no reason to believe that the Times-
17 Tribune LLP or Bob Casey for Pennsylvania Committee and Vanessa DeSalvo Getz, in her
18 official capacity as treasurer, violated 2 U.S.C. § 441b by making or receiving coordinated in-
19 kind contributions. We also recommend that the Commission close the file.

20 IV. RECOMMENDATIONS

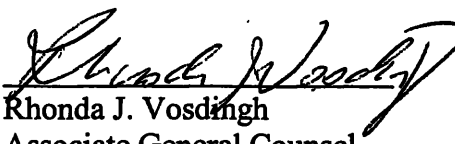
- 21 1. Find no reason to believe that the Times-Tribune LLP made corporate expenditures,
22 in violation of 2 U.S.C. § 441b;


⁷ The conduct standards of "common vendor" and "former employee or independent contractor" are not alleged, nor do they apply here. 11 C.F.R. § 109.21(d)(4)-(5).

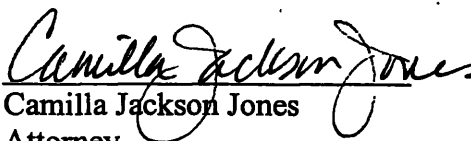
2. Find no reason to believe that the Times-Tribune LLP failed to provide appropriate disclaimers for its advertising campaign, in violation of 2 U.S.C. § 441d;
3. Find no reason to believe that the Bob Casey for Pennsylvania Committee and Vanessa DeSalvo Getz, in her official capacity as treasurer, in violated 2 U.S.C. § 441b;
4. Approve the appropriate letters; and
5. Close the File.

Lawrence H. Norton
General Counsel

9/5/06
Date

BY: 
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement


Mark D. Shonkwiler
Assistant General Counsel


Camilla Jackson Jones
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Attachment: Photographs of Times-Tribune Advertisements